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C O N F I D E N T I A L SECTION 01 OF 02 HONG KONG 000232

SIPDIS

DEPT FOR EAP/CM; ALSO FOR DRL

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TAGS: PGOV PHUM MC CH

SUBJECT: MACAU ARTICLE 23 HEADS FOR FINAL VOTE WITHOUT
MAJOR REVISION

REF: 08 HONG KONG 2258

Classified By: Consul General Joe Donovan for Reasons 1.4 (b) and (d).

¶1. (C) Summary: The Macau Government submitted a revised Article 23 Bill text to the Legislative Assembly February 3. The minimum sentences for treason, splitting and subversion have been lowered to ten years' imprisonment from fifteen years. However, the government and Legislative Assembly have rejected, apparently without substantive consideration, revisions proposed by democratic New Macau Association legislators January 19. NMA's revisions would have clarified provisions on "preparatory acts", more clearly linked alleged incitement charges to actual crimes, and provided an explicit public interest defense for journalists revealing classified information. The bill is expected to come up for a final vote either the week of February 9 or the week following, and should pass as now written. End summary.

Nearing the End

¶2. (SBU) The revised text submitted by the Macau government to the Legislative Assembly (LA) February 3 likely represents the bill which will become law. As widely reported in the media, the government accepted recommendations from the LA Second Standing Committee (which is reviewing the bill) to lower the minimum sentence for treason, splitting the country, and subversion against the central people's government from fifteen to ten years' imprisonment. Advocates held this put the penalty in line with similar offenses under Mainland law (although the maximum penalty in Macau is twenty-five years, while on the Mainland it is life imprisonment). Another amendment changes the effective date of the law to the day after its publication, rather than thirty days following publication as stated in the December text. The remaining changes are largely technical fixes which do not change the scope of the law.

¶3. (SBU) Second Standing Committee Chair Fong Chi-keong, of the pro-government General Union for the Good of Macau, has predicted in the press that the bill will go to a vote sometime between February 9-20. The bill is expected to pass easily. Of 29 legislators, only Antonio Ng and Au Kam-san of the proto-democratic New Macau Association (NMA) opposed the text in its initial reading in the LA, with democratic-leaning civil service union rep Jose Coutinho abstaining.

Amendments Rejected

¶4. (SBU) In an open letter to the Legislative Assembly January 19 -- the only other substantive revisions proposed during the LA's deliberations -- NMA's Ng and Au called for eight specific changes to the text. They are:

-- Remove "jeopardize transportation security or communication security" from the list of "other serious illegal methods" in describing offenses under the law. NMA argued that ordinary protests frequently disrupt normal transport, and feared this language could be used to criminalize peaceful marches;

-- Either clarify the threshold at which "preparatory acts" become criminal, or delete the language;

-- Limit the crime of incitement to only those cases in which "open and direct" incitement leads immediately and directly to a criminal act;

-- Specify at Article IV (Incitement to Insurrection) that "non-violent methods of putting forth political advocacy or academic discussion do not fall under the scope of this law;"

-- Remove the term "pry into" (ci tan) as a criminal means of acquiring state secrets at Article V (Theft of State Secrets);

-- Also at Article V, require that a person who stole or purchased a state secret did so with full knowledge of the secret and consequently harmed national security;

-- Add specific "public interest" and "public's right to know" defenses to Article V offenses; and

-- Change Article V, Section 2 language on foreign support of the theft of state secrets from "receive from a government

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outside the Macau SAR" to "receive from the government of a foreign country" (to eliminate Hong Kong, Taiwan and the Mainland.)

¶15. (C) Chairman Fong had told the press as early as January 13 that "I don't think there is much room to amend the bill." He nevertheless stated on January 21 (two days after NMA's letter was issued) that all views would be reflected in the committee's report to the government (presumably sent prior to the issuance of the revised text February 3). The proposals found no more support in the government than in the LA, and none were adopted in the revised text. Fong was quoted February 3 as dismissing the NMA proposals, saying "mainstream views of society and the Standing Committee" viewed them as "redundant".

¶16. (C) A Macau academic contact told us independent weekly San Pou supported the NMA proposals, while pro-Beijing daily San Wa Ou criticized NMA; any other media reporting was fact-based (with NMA receiving coverage at least in the English-language papers). NMA's Au and Ng also confirmed by e-mail their proposals had been rejected, with Au warning, "the devil remains in the detail, foreshadowing the possibility for the police to abuse their power and for the government to deal with dissidents."

DONOVAN